

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
NEW YORK DIVISION OF JUDGES**

**CORNER INVESTMENT COMPANY, LLC  
D/B/A THE CROMWELL**

**Case 28-CA-209739**

and

**ROBERT COVERT, an Individual**

**ORDER DENYING, IN PART, THE RESPONDENT'S PETITION TO REVOKE THE  
GENERAL COUNSEL SUBPOENA DEUCES TECUM**

Counsel for Corner Investment Company, LLC d/b/a as The Cromwell (Respondent) moved to revoke portions of the General Counsel subpoena deuces tecum No. B-1-11U15DF(subpoena). The counsel for the General Counsel opposes the petition to revoke. Upon due consideration and for the reasons set forth in the General Counsel opposition to revoke, the Respondent's petition to revoke the aforementioned subpoena is denied in part.

The complaint alleges certain unfair labor practices by the Respondent when it disciplined and discharged Robert Covert; promulgated an overly-broad and discriminatory policy; and threatened employees with discipline in violation of the Act. I find that the Respondent has not met its burden to show that to produce the requested documents is unduly burdensome on its operations or would threaten the normal operation of its business. Bare assertions that production would be seriously disruptive are insufficient. *NLRB v. AJD Inc., a McDonald's Franchisee*, 2015 WL7018351 (S.D.N.Y. Nov. 2015).

I find that subpoena request paragraphs 1, 2, 3, 5, 6, 7, 8, 9, 10, 12, 13, 14, and 16 are specifically clear and not overly broad, burdensome, vague or ambiguous. The subpoenaed documents are specific and describe with sufficient particularity the evidence sought, as required by Section 11 (1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. The counsel for the Respondent argues that it is burdensome on the operations. The party asserting burdensomeness of production must meet a high standard of proof. A subpoena is not unduly burdensome simply because it requires the production of a large volume of documents. *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507, 513-514 (4th Cir. 1996).

The Respondent has also failed to show that producing some documents would interfere with its preparation of the hearing. On this point, I note that Respondent has been well aware of the NLRB charge and complaint over an extended period of time

and it is unreasonable to believe that it is only now preparing its case for trial. As such, requiring the Respondent to produce the subpoenaed documents by July 17 does not excuse it from making a good faith effort to begin gathering the subpoenaed documents upon service of the subpoena and bring them to the hearing.

Further, the requested documents would provide background information or may lead to other evidence potentially relevant to an allegation in the complaint. Board's Rules, Section 102.31(b). The Respondent is only responsible for providing the documents in its possession and shall note to the counsel for the General Counsel the documents that it cannot produce because they are not in its possession. The Respondent is also only required to produce documents that are not duplicative or cumulative and shall note to the counsel for the General Counsel that such documents have been produced in another request paragraph.

Request paragraph 4 seeks employee statements of complaints received by Respondent in reference to Covert since April 1, 2014. The Respondent is only required to provide such documents from January 1, 2016 to the present.

Request No. 11 seeks documents to show incidents in which the Respondent did/or did not decide to investigate or take corrective action...since January 1, 2015. The Respondent is only required to produce such documents from January 1, 2016 to the present.

Request No. 15 seeks documents previously submitted by the Respondent to the NLRB during the investigation of this complaint. The Respondent is not required to produce those documents again, but the Respondent is required to accurately describe the documents that were previously provided and state whether those documents constitute all of the documents now being subpoenaed.

The Respondent also argues that some documents in the subpoenas are privileged even if they are found to be relevant, not vague or overbroad, not burdensome, and do not lack specificity. In order to determine if the documents are confidential or privileged, a privilege log/index is necessary to identify the documents the Respondent believes are covered by the privilege.

The party asserting a privilege has the burden to establish that the documents are in fact privileged and confidential. As part of showing this burden, the Respondent must provide a privilege (or confidential) index log specifically identifying the documents that are covered by the asserted privilege and provide a good cause explanation showing harm if the privilege/confidential nature of the document is disclosed. The index must include 1) a description of the document, including its subject matter and the purpose for which it was created; 2) the date the document was created; 3) the name and job title of the author of the document; and 4) if applicable, the name and job title of the recipient(s). *CNN America, Inc.* 353 NLRB at 899 (2009).

Therefore, the Respondent is ordered to produce the documents pursuant to subpoena with the limitations noted above to the counsel for the General Counsel at the location, date and time stated in the subpoena or at another designated time agreed upon by the parties. The counsel for the Respondent is instructed to provide a privilege log/index as instructed above at the time of the hearing.

Dated: July 14, 2018  
New York, New York

/s/ *Kenneth W. Chu*

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Kenneth W. Chu  
Acting Associate Chief Administrative Law Judge